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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Implementation of Infrastructure)
Sharing Provisions in the)
Telecommunications Act of 1996)

CC Docket No. 96-237

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PETITION FOR RECONSIDERATION OF
GTE SERVICE CORPORATION

*Federal Communications Commission
Office of Secretary*

GTE Service Corporation ("GTE"), on behalf of its affiliated domestic telephone operating companies, hereby files a Petition for Reconsideration of the Report and Order issued by the Commission in the above-captioned docket.¹ In considering rules to implement Section 259 of the Act, the Commission followed the recommendations of the majority of the parties, including GTE, by adopting only minimal rules which will allow providing and qualifying non-competing local exchange carriers ("LECs") to develop mutually beneficial sharing arrangements. GTE believes that this approach will encourage infrastructure sharing and assist smaller LECs in bringing advanced services to their customers.

However, GTE urges the Commission to reconsider its position regarding intellectual property and licensing arrangements. Specifically, the Order states that "[i]n cases where the only means available is including the qualifying carrier

¹ Report and Order, CC Docket No. 96-237, FCC 97-36 (rel. Feb. 7, 1997)("Order").

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in a licensing arrangement, the providing incumbent LEC will be required to secure such licensing by negotiating with the relevant third party directly.”² GTE urges the Commission to reconsider this policy, which unreasonably and unrealistically requires providing LECs to negotiate on behalf of qualifying carriers.

The Order puts the burden on the providing LEC to negotiate licensing agreements that a qualifying carrier may need from third parties. As a preliminary jurisdictional matter, the Commission has no authority to require third parties to negotiate or enter into licensing arrangements of their technology to any particular parties.³ Even though the Commission can order that providing LECs attempt to negotiate these arrangements, the third party vendor will not be obligated to comply. It is futile to order the providing LEC to engage in such negotiations if the Commission has no authority to require third party cooperation.

In addition, requiring the providing LEC to be involved in the negotiations between the qualifying LEC and the third party both erroneously presumes that the providing carrier can assist in those negotiations and unreasonably burdens the providing carrier. In fact, the qualifying carrier should negotiate directly with the third party licensor.

² Order, ¶ 70.

³ The Order appears to recognize this lack of jurisdiction by emphasizing that the “decision is not directed at third party providers of information but at providing incumbent LECs.” *Id.*

The qualifying LEC is best positioned to negotiate with the third party licensor. The terms and rights granted by a licensing agreement are varied and specifically tailored to the parties and the contemplated uses. The qualifying carrier is best able to negotiate with the third party vendor on the appropriate price and conditions based on the qualifying carriers' use of the technology and the end users it intends to serve. Because a qualifying carrier may be using the technology to provide services the providing LEC does not sell and will be serving a different customer base, the terms of the qualifying carrier's license will likely differ considerably from those of the providing LEC. The qualifying carrier will be in the best position to explain its use of any licensed technology to the third party vendor. Since the licenses at issue are, for the most part, non-exclusive licenses, there is no reason to believe that the qualifying carrier could not negotiate for a license directly from the licensor. Requiring providing LECs to renegotiate their license agreements or to negotiate new arrangements for qualifying carriers is unreasonable, especially since there is no evidence that qualifying carriers are unable to negotiate such agreements on their own.

With respect to the burden of negotiations, the Order states that the providing carrier "must determine an appropriate way to negotiate and implement section 259 agreements with qualifying carriers, *i.e.*, without imposing inappropriate burdens on qualifying carriers." The Order then compels providing carriers to negotiate with third parties on behalf of qualifying carriers. Although the Commission is concerned about imposing burdens on qualifying carriers, it totally ignores the burdens imposed on providing carriers to engage

in such negotiations. However, the Commission must consider this burden to the providing LEC in its analysis. Section 259(b)(1) states that the terms and conditions of the regulations imposed by the Commission in implementing the infrastructure sharing requirements shall “not require a local exchange carrier to which this section applies to take any action that is economically unreasonable or is contrary to the public interest.”⁴ Forcing providing carriers to perform such a service would compel a costly expenditure of the providing LEC’s time and resources on the negotiation. A less burdensome alternative, which is more consistent with Section 259(b)(1) and the public interest, would be to direct the providing LEC to inform the qualifying carrier of the name of the licensor and the licensing agreements involved so that the qualifying carrier can contact the licensor directly.

⁴ 47 U.S.C. §259(b)(1).


Therefore, on reconsideration, the Commission should find that, if a license is necessary to enable a qualifying LEC to utilize any shared infrastructure, the qualifying LEC is responsible for negotiating licensing arrangements with the third party vendor.

Respectfully submitted,

GTE SERVICE CORPORATION, on behalf of
its affiliated domestic telephone operating
companies

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